

DISSENTING VIEWS – TITLE VI (COMMITTEE ON RESOURCES)

The Committee on Resources is instructed by the Budget Resolution to raise \$2.4 billion in revenue in the five-year period prior to October 1, 2010. Yet, instead of responsibly raising revenue to address our nation's serious budgetary problems, the committee's Majority has chosen to abuse the budget process to promote misguided and controversial legislation which has little relevance to deficit reduction. To the contrary, the committee's recommendations to the Committee on the Budget impose substantial, long-term costs on both the American taxpayers and the environment.

The committee's recommendations would radically alter laws applicable to the management of our nation's public resources by repealing:

- The 25-year-old prohibition on oil and gas development in the Arctic National Wildlife Refuge in Alaska;
- The 13-year-old ban on issuing patents to allow mining companies to obtain title to public lands at nominal cost under the Mining Law of 1872 ; and,
- The 24-year-old moratorium on oil and gas leasing on Outer Continental Shelf (OCS) lands offshore east and west coast states.

In addition, the committee's proposal would subsidize and fast-track oil shale development across the west and sell federal lands and properties in Nevada, Idaho and the District of Columbia, the latter in a manner undercutting a carefully negotiated agreement.

The committee's budget reconciliation recommendations not only represent misplaced priorities but also missed opportunities.

Rather than attempting to disguise the Arctic National Wildlife Refuge controversy as a budget matter -- when any ANWR revenues are highly speculative -- the committee could have met its budgetary obligations by modestly raising fees and royalties on the oil and gas industry, which is profiting at record levels from access to public lands and resources under current law. Rather than open the door to more abuses and giveaways of public lands to the hard rock mining industry, as is the case with the sham reform in Subtitle B, the committee could have generated hundreds of millions of dollars in revenue by establishing a royalty on the value of such minerals extracted from public lands.

The committee's recommendations for fundamentally altering the system governing oil and gas leasing on Outer Continental Shelf (OCS) lands is yet another egregious abuse of the budget - and the public - process. The product of closed-door negotiations, the complex legislative scheme in Subtitle E has not been subject to a single day of public hearings, even though it affects millions of Americans, particularly those who live in coastal states. Short-term revenue gain (e.g., from the controversial Lease Sale 181 off the Florida coast) would be offset

by revenue sharing provisions for producing states and the creation of new spending programs, which, in the long-term, would divert billions of dollars annually away from the Treasury.

And in a provision which is inexplicable at a time of record oil and gas industry profits and bizarrely contrary to budget reconciliation, the OCS subtitle also includes language (Section 6524) which “notwithstanding any other provision of law” permanently *prohibits* any increase in existing fees (beyond CPI) or the creation of new fees “applicable to actions on Federal onshore and offshore oil and gas, coal, geothermal and other mineral leases, including transportation of any production from such leases.” In an era of enormous budget deficits, enacting such a prohibition on new revenue would be utterly irresponsible.

DEMOCRATIC AMENDMENTS

Democratic Members offered the following amendments to the Budget Reconciliation Committee Print at the markup on Wed., October 26, 2005. All of the Democratic amendments were rejected by roll call votes and the Committee Print was approved by a vote of 24 to 16 with 14 Democratic Members voting no.

Subtitle A – Arctic National Wildlife Refuge Oil and Gas Leasing

- 1) **MARKEY AMENDMENT** – Strikes ANWR leasing authority and instead directs the Secretary of the Interior to raise \$2.4 billion in oil and gas fees and royalties.
- 2) **KIND AMENDMENT** – To assure that ANWR revenue provisions will be enforceable, requires that the State of Alaska agree to a 50/50 percent split with the U.S. Treasury as a pre-condition for leasing.
- 3) **GRJILAVA AMENDMENT** – Requires that the Arctic Slope Regional Corporation comply with the Alaska Native Claims Settlement Act’s revenue sharing requirement (for other Alaska Natives) as a pre-condition for leasing.
- 4) **INSLEE AMENDMENT** – Strikes NEPA waivers.

Subtitle B – Hard Rock Mining

- 5) **TOM UDALL AMENDMENT** – Strikes (Mining) Subtitle B.
- 6) **INSLEE AMENDMENT** – Imposes 8 percent royalty on hard rock mining on public lands.

Subtitle D – Oil Shale

7) **MARK UDALL AMENDMENT** – Requires consultation with states (current law), deletes minimum leasing mandate, and strikes mandatory royalty reduction requirements.

Subtitle E – Outer Continental Shelf (OCS) Oil and Gas Leasing

8) **PALLONE AMENDMENT** – Strikes (OCS) Subtitle E

SUBTITLE ANALYSIS

Subtitle A – Arctic National Wildlife Refuge Oil and Gas Leasing

Subtitle A of the Committee Print authorizes oil and gas leasing in the Arctic National Wildlife in Alaska. The bill purports to split the revenue from the Federal lands equally with the State of Alaska, ostensibly resulting in \$2.5 billion in receipts for the U.S. Treasury and \$2.5 billion for the State of Alaska over five years (based on the CBO cost estimate for H.R. 6).

Including ANWR in Budget Reconciliation raises a number of issues, among them:

1) **The oil and gas industry is not actively lobbying for ANWR.** CBO's estimate that ANWR will produce \$5 billion in total revenue over the first five years is based on bureaucratic economic modeling at the Department of the Interior. In the real world, the major oil and gas companies which operate in Alaska have shown little public enthusiasm for opening ANWR, casting serious doubt on whether they would invest billions to make ANWR the biggest dollar lease sale in U.S. history as anticipated by the Department. See: "Big Oil Steps Aside in Battle Over the Arctic," New York Times, February, 21, 2005.

<http://www.nytimes.com/2005/02/21/politics/21refuge.html>

2) **Minimal revenue from comparable lease sales in the National Petroleum Reserve – Alaska casts doubt on ANWR revenue estimates.** NPR-A is located on the North Slope of Alaska to the west of Prudhoe Bay. The Department of the Interior held a 1.4 million acre lease sale in 2004 (comparable in size to the 1.5 million acre ANWR coastal plain) that generated only \$54 million in bonus bids. By contrast, CBO is relying on Department of the Interior projections that ANWR will produce \$5 billion or 93 times the revenue that was generated in the real world NPR-A sale.

3) **The State of Alaska will file a lawsuit to claim 90 percent of the ANWR revenue.** Under the Alaska Statehood Act – which is current law – the State of Alaska receives 90 percent of oil and gas leasing revenue from federal lands. The state legislature has repeatedly endorsed preservation of the 90/10 split between the state and federal government for ANWR revenues and a lawsuit over this issue is inevitable since the Committee Print provides for the revenues to

be equally divided. Accordingly, ANWR revenues would be tied up in court-ordered escrow for years and, ultimately, if the state prevails in its claim that it is entitled to 90 percent under the terms of its admission to the Union, the federal share would be reduced to ten percent or *only \$500 million* (instead of \$2.5 billion under the CBO projections).

4) Senate Byrd Rule means that environmental, labor and Native legislative provisions will be dropped if ANWR is included in a budget reconciliation conference report. The Senate Energy Committee held a markup on Wed. October 20, 2005 and – in order to comply with the Senate Byrd Rule on matters extraneous to budget reconciliation -- reported ANWR legislation which is significantly different than what is contained in the Committee Print. http://energy.senate.gov/public/index.cfm?FuseAction=IssueItems.View&IssueItem_ID=25

Notably, in order to comply with the Byrd Rule, the Senate Energy Committee *eliminated* from its ANWR legislation:

- the ban on exporting ANWR oil;
- the requirement for project labor agreements;
- environmental safeguards (further weakening the House bill and resulting in far less legal protection for ANWR than applies under current law to any other federal land in the nation); and,
- authority for Alaska Native corporations to receive revenues from the development of their lands.

In order to attempt to address the Byrd Rule problems, Senators Murkowski and Stevens introduced companion legislation, S. 1891, to restore provisions contained in the House-passed version of H.R. 6 (and the Committee Print). However, that bill would be subject to a filibuster and its prospects for passage are uncertain at best.

Subtitle B – Hard Rock Mining

Right to Mine: Section 6201 revises the mining law to give companies the right to claim public lands “for hardrock mining” (e.g., gold and silver) whether or not there is a valuable mineral deposit within the claim. Under current law, a company must prove it has a properly staked and maintained claim on a valuable mineral deposit before the right to mine is established. The Committee Print allows mining companies to secure this right to mine by simply filing a claim application and paying a small fee with the Bureau of Land Management. This section also lowers mining maintenance fees from \$125 under current law to \$35 for the first 5 years.

Patents: Section 6202 eliminates the current Congressional ban on the "patenting" of mining claims on public lands. Under the 1872 Mining Law, mining companies can patent --- buy --- public land for \$2.50 or \$5 an acre. Since 1994, Congress has placed a moratorium on

patenting, in each annual Interior Appropriations bill. Under the Committee Print, as amended, mining companies would be able to buy full-fee-title (surface and subsurface) to public land for either \$1,000 an acre or the fair-market value of the surface (without consideration of the value of the minerals contained in the land), whichever is greater. In addition, the buyer would pay a \$2,500 processing fee for the first claim and \$50 processing fee for each additional claim. Small miners, under this section, defined as those that hold 10 claims or less, would pay one-fifth of what larger companies would be required to pay.

This section would facilitate the transfer of public lands to the mining industry by eliminating the standard tests of the 1872 Mining law to ensure that the assets being divested will be developed for mining purposes. The Committee Print eliminates the existing "discovery of a valuable mineral" requirements that must be met before a patent is issued, enshrines a mining company's "right to mine" regardless of whether or not they have a valuable mineral deposit and eliminates the ability of concerned citizens to challenge mining company patents. The Committee Print allows companies to patent — or buy — public land without proving they have a valuable mineral deposit as long as they a) already have a permit to mine or b) have reported to the Security Exchange Commission that a "probable" mineral reserve is located in the claim. The Committee Print would enable mining companies to easily purchase public land without having to prove that they can or will construct a viable mine on the property. Thus, lands sold off through these purchases could be used for non-mining purposes, such as resort or other commercial development.

This section also *prohibits* any other fees or fair-market-value assessments to be applied to "prospecting, exploration, development, mining, processing, or reclamation, and uses reasonably incident thereto" - which would prohibit the government from levying any royalty or other production fee on mining operations.

Finally, this section provides funding for new federal programs that would not be subject to appropriations. Of the revenues collected under this section, 10% are allocated to the Federal Energy and Mineral Resources Fund (created under section 6514 of the OCS subtitle), 20% to the Army Corps of Engineers to pay for the restoration of abandoned mine sites and the remaining 70% to the Treasury.

Mining in Protected Areas: Section 6203, as amended, allows the Secretary to approve a plan of operations without a mineral examination report for mines in withdrawn areas if there are already patented or unpatented claims contiguous to such areas where mining activities are already occurring. This allows mining companies to mine in public lands, such as National Forests and lands managed by the Bureau of Land Management, (including Wilderness Study Areas) without proving the existence of a valid mineral deposit.

Public Lands Give-Away: Section 6204 allows individuals to purchase "mineral development lands" — any land with a mineral deposit as well as lands that were once mineralized and have been previously mined — for "sustainable economic development." This section also allows anyone who holds mining claims or millsites where mineral development has occurred, as authorized by law or regulation, to purchase those lands. This section would apply

to public lands, such as National Forests and lands managed by the Bureau of Land Management, including Wilderness Study Areas.

Offsite Mitigation: Finally, Section 6518 of the OCS Subtitle allows any mitigation required for energy projects, both on and offshore, including activity under the Mineral Leasing Act, the Mining Law of 1872 and other federal statutes, to be performed at sites away from the area actually impacted by the energy and/or mineral production activity.

Subtitle C - Disposal of Public Lands in Nevada and Idaho

Subtitle C-Chapter 1:Disposal of Certain Public Lands in Nevada

Chapter 1 directs the Secretary of the Interior to convey 7000 acres of public land in Pershing County, Nevada to a mining company in return for the payment of \$500 per acre. The legislation waives the conveyance from any review or approval under Federal law. Of the proceeds from the conveyance, up to \$20,000 is made available to the Nevada BLM, \$500,000 is paid directly to the State of Nevada, and \$100,000 is paid directly to Pershing County. The remainder of the proceeds are to be deposited in the general fund of the Treasury.

Subtitle C-Chapter 2:Disposal of Certain Public Lands in Idaho

Chapter 2 directs the Secretary of the Interior to convey 519.7 acres of public land in Custer County, Idaho to a mining company in return for the payment of \$1000 per acre. The legislation waives the conveyance from any review or approval under Federal law. Of the proceeds from the conveyance, up to \$20,000 is made available to the Idaho BLM, \$200,000 is paid directly to the State of Idaho, and \$200,000 is paid directly to Custer County. The remainder of the proceeds are to be deposited in the general fund of the Treasury.

Subtitle D - Oil Shale

States Rights Eliminated: Section 6401 would amend Section 369 of the Energy Policy Act of 2005 signed in August, which provides that before any new large-scale leasing program (as opposed to the smaller-scale leasing for experimental purposes now getting underway), the Interior Department must:

- 1) Prepare a programmatic environmental impact statement, to be finished within 18 months after the new law: this is already getting underway;
- 2) Issue new leasing regulations (deadline is 6 months after completion of the EIS); and then
- 3) Consult with relevant Governors, local governments, interested Indian tribes, and other interested persons, to determine the level of support for development of oil shale resources

The Committee Print would eliminate the requirement that Interior consult with the Governors of affected States, local governments, and others to determine whether there is support for development of oil shale in Colorado, Wyoming, Utah or other affected States.

Fast-Track Oil Shale Development: The Committee Print would require Interior to lease a MINIMUM of 35% of "the Federal lands that are geologically prospective for oil shale and tar sands within Colorado, Utah, and Wyoming" and to do so no later than 1 year after publishing the new leasing regulations. It is not clear whether this means 35% of such lands in EACH state, or 35% of the total in the 3 states. In either case, this is a requirement for a very fast, large-scale commercial leasing program.

No Criticism or Challenges Allowed: As noted, current law requires Interior to prepare a programmatic EIS prior to issuing the new leasing regulations. The Committee Print provides that this EIS - which has not yet been written - "is deemed to provide adequate environmental analysis for all oil shale and tar sands lease sales conducted within the first 10 years after promulgation of the regulations, and such sales shall not be subject to further environmental analysis."

In other words, the Committee Print would preclude for a full decade any challenge to the adequacy of whatever EIS the Interior Department may produce. This overrides any concerns the States, local governments, and public citizens may have with any aspect of the EIS, and would do so preemptively, before the EIS has even been written.

Price-Fixing: Section 369(o) of Energy Policy Act of 2005 directs the Interior Department to set oil-shale royalty rates that will "(1) encourage development of the oil shale and tar sands resource; and (2) ensure a fair return to the United States [i.e. the taxpayers]."

The Committee Print would repeal this requirement and replace it with detailed provisions specifying what royalty rates are to be charged for the first 10 years of commercial oil shale production, and require that after that the rates must be adjusted according to a formula tied to certain oil prices. Since this formula has not been subject to a legislative hearing, one can only conclude that this looks like micro-management at best, and raises the question of whether it is fair to the taxpayers.

The remainder of the subtitle (starting on line 24 of page 59) addresses the allocation of federal revenues from oil shale/tar sands royalties. Under this part of the committee print all royalties would go into a separate Treasury account; 50% of the return from each lease would be allocated to the state where the leased lands are located, with two-thirds of each state's share going to the state government and one-third to the county and municipal governments. Any remaining revenues would go to miscellaneous receipts in the Treasury (pp 60-62). A recipient government could use the money for "any lawful purpose as determined by state law" and would not count as offsets to reduce PILT payments. It is not known whether this subtitle would raise or reduce federal revenues.

Subtitle E – Outer Continental Shelf (OCS) Oil and Gas Leasing

OCS-Offshore Drilling: The Committee Print contains provisions in Subtitle E – Ocean Energy Resources that would affect radical change to the current law applicable to management of oil and gas resources on the federal Outer Continental Shelf (OCS). This subtitle is similar to one considered by the Committee in the Energy 2 legislation marked-up in September; however, it has not been subject to a legislative hearing. Among its major provisions, Subtitle E includes the following:

Moratoria on Offshore Drilling: Section 6515 opens all areas of the Outer Continental Shelf (OCS) to potential oil and gas exploration and development by repealing the offshore drilling moratorium which has been enacted annually by Congress since 1980. Section 6515 provides that:

“All provisions of existing Federal law prohibiting the spending of appropriated funds to conduct oil and natural gas leasing and preleasing activities for any area of the outer Continental Shelf shall have no force or effect.”

Although Section 6509 of the Committee Print extends the moratoria areas until June 30, 2012 (a date consistent with the expiration of the Presidential Executive Order prohibiting OCS leasing in those areas), a state may choose to be exempted from the moratoria and leasing could occur anytime prior to 2012 within 125 miles of its coastline. In essence, decision-making authority to allow and set conditions for offshore oil and gas leasing on the federal OCS would be delegated to the states, specifically to the governor and legislature of coastal states.

After the expiration of any remaining moratoria in 2012, states that still opposed OCS development would be required to petition the Department of the Interior to keep the moratoria. Beyond 125 miles, however, the moratoria would expire even if a state opposed leasing in that area off its coast.

CZMA Consistency & States’ Rights: Provisions contained in Subtitle E would have profound negative consequences for implementation of the Coastal Zone Management Act. Policy changes under this subtitle completely re-write the 1990 amendments to the CZMA which clarified that OCS oil and gas activities fall squarely within the Federal consistency review authority of coastal states. Section 6503 would replace the OCSLA definition of “affected state” with a new, weaker definition for “adjacent state” that would eliminate inclusion of states negatively impacted by OCS activities. Section 6502 would declare arbitrarily that OCS activities as close as 25 or 50 miles from the coast have no “reasonably foreseeable” adverse impact. Additionally, section 6512 would categorically exclude oil and gas activities from having to prepare environmental impact statements or environmental assessments under the National Environmental Policy Act further restricting review opportunities by concerned coastal states. The practical effect of these changes would be to override the Federal consistency protections currently authorized under the CZMA for states seeking to protect their coasts from OCS activities. This subtitle also contains a provision (section 6521) that would allow the oil

and gas industry to evade their legal responsibility to remove decommissioned rigs and platforms from the OCS in favor of promoting other controversial uses, such as open ocean aquaculture.

Incentives to Drill/Decreased Federal Revenues: Section 6507 provides significant incentives for coastal states and local political subdivisions to open OCS lands off their respective coastlines. The bill provides a very complicated and multi-tiered set of formulae for allocating and disbursing federal revenues to coastal states that allow offshore drilling adjacent to their states. In short, the Committee print would ultimately divert 40% of federal oil and gas leasing bonus bids and royalties from OCS leasing to participating States, costing the U.S. Treasury billions of dollars in future revenues.

The subtitle would also create 3 new federal programs (sections 6514, 6523 and 6526) that would be funded, without further appropriation, from OCS revenues. Permissible expenditures of OCS receipts by a state are unlimited (including to “to reduce taxes”) and no accounting to the federal government is allowed.

Natural Gas OCS Leasing Required by 2006: Section 6505 requires that the federal government have a “natural gas only” leasing program by October 1, 2006.

Florida Lease Sale 181/DOD Issues: Section 6509 transfers certain lands included in the controversial proposed Lease Sale 181, now considered to be off Florida’s coastline, to Alabama and requires that this parcel be sold within 90-days of enactment. The Final EIS done for Lease Sale 181 is deemed sufficient to meet the NEPA requirements for this new federal OCS leasing action. Moreover, Senator Nelson (D-FL) has objected to this language and has written to Chairman Pombo on October 19, 2005:

“Unfortunately, your proposal to expand drilling in the eastern Gulf undermines the long-standing agreement between the Department of Defense and the Department of the Interior that has allowed this critical testing and training space to remain open. That arrangement, first established by the Reagan Administration in 1983, gives the Air Force say over the sale of drilling leases in the eastern Gulf to protect U.S. military readiness from falling prey to oil-drilling interests.”

“Compensation” for Lessees: Section 6506 establishes “rights to produce” oil and gas and devises a formula for “compensation” to the holders of leases not in production.

Leasing Mandate: Section 6510 requires that the Secretary of the Interior lease “at least” 75 percent of the available unleased acreage within each OCS Planning Area.

Incompatible Activities Prohibited: Section 6516 prohibits construction or operation of any “facility, restricted transportation corridor or operating area” in the OCS that is incompatible with energy leasing, production or exploration. The President may grant exceptions to this prohibition after a finding that the activity is in the “national interest.”

Override of State's Rights for Pipelines: Section 6511 prohibits coastal states from blocking construction and landing of natural gas pipelines within their borders unless the state provides two alternatives in an adjacent state, acceptable to the adjacent state.

Offsite Mitigation: Section 6518 allows any mitigation required for energy projects, both on and offshore, including activity under the Mineral Leasing Act, the Mining Law of 1872 and other federal statutes, to be performed at sites away from the area actually impacted by the energy production activity.

Lease Exchange: Section 6527 would allow undeveloped existing leases near the coastlines of Florida and California to be exchanged for leases beyond 100 miles from the coastline at the request of the leaseholder, even if that lease is located within a withdrawn area. This provision applies to 37 existing leases located off California's Central Coast and 66 leases adjacent to Florida.

Subtitle F – Sale of Federal Land in the District of Columbia

After extensive negotiations between the District of Columbia, the Department of the Interior, the National Park Service and Members of Congress complex legislation dealing with a list of federally owned parcels in the District was introduced in September. Original cosponsors of H.R. 3699 were Representatives Davis, Norton and Van Hollen. Representatives Duncan, Cannon and Drake have since signed onto the bill.

The legislation contains a complicated series of land exchanges and sales designed to provide the District with more land in and around the Anacostia Waterfront and elsewhere while also streamlining NPS land management in the area. H.R. 3699 was reported by the Government Reform Committee by voice vote on September 29. The bill was sequentially referred to the Resources Committee which has taken no action.

Subtitle F of the Committee Print makes drastic changes to the proposal contained in H.R. 3699. Most significantly, a number of parcels, including Poplar Point along the Anacostia waterfront and Mount Vernon Square across the street from the Convention Center, which were to be traded or sold to the District, are now authorized for sale to the highest bidder. Furthermore, certain open space requirements that were to be included in the sales to the District and several parcels that would have been transferred from the District to DOI under H.R. 3699 are *not* included in the Committee Print.



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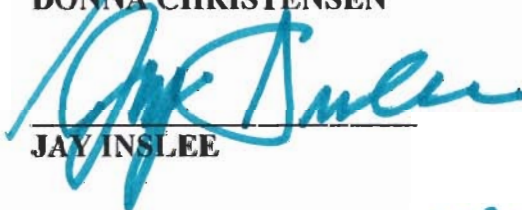
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